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PROGRAMME MATTERS

Mid-term review of the Programme for the Development and Periodic Review of Environmental Law for the 1990s and further development of international environmental law aiming at sustainable development

Position Paper for International Environmental Law

Note by the Executive Director

1. The Executive Director has the honour to present herewith for the information of the Governing Council the position paper for International Environmental Law prepared pursuant to the request of the Governing Council in its decision 18/9, paragraph 4, with the assistance of an Expert Group Workshop on International Environmental Law Aiming at Sustainable Development, which was convened by UNEP and met in Washington, D.C. in November 1995 and in May and September/October 1996.

2. The text of the study is reproduced as it appears in annex I of the final report of the Expert Group Workshop (UNEP/IEL/WS/3/2), which has already been circulated to all Governments in English, French and Spanish, the three working languages of the Workshop.

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Annex

POSITION PAPER ON INTERNATIONAL ENVIRONMENTAL LAW AIMING AT SUSTAINABLE DEVELOPMENT

Introduction

1. Consistent with the United Nations Environment Programme's (UNEP's) general mandate to further the development of international environmental law, this Position Paper responds to UNEP Governing Council decision 18/9, paragraph 4, which requests that the UNEP Executive Director develop a "position paper for international environmental law aiming at sustainable development, containing, inter alia, compliance/implementation mechanisms, dispute avoidance/settlement procedures and new concepts and principles, with reference to existing international legal instruments as well as guidelines developed by institutions both within and outside the United Nations system." The position paper was developed with assistance of three meetings of an Experts Group on International Environmental Law Aiming at Sustainable Development, convened by UNEP and organized in cooperation with the Center for International Environmental Law (CIEL).

2. Since 1982, UNEP's action in the development of international environmental law has been guided first by the 1982 "Programme for the Development and Periodic Review of Environmental Law" (the Montevideo Programme) and, more recently, by the 1993 Programme for the Development and Periodic Review of Environmental Law for the 1990's (Montevideo Programme II). The Montevideo Programme II defines objectives, strategies, and priorities for each of the eighteen program areas, and identifies several additional subjects for possible action during the decade. Implementation of Montevideo Programme II is continuously evolving to be consistent with implementation of Agenda 21 and changing perceptions and priorities. For these purposes, UNEP Governing Council decision 17/25 provided for an intermediate review of the Montevideo Programme II not later than 1997. This request has been complemented by UNEP Governing Council decision 18/9, which requested that this Position Paper and other documents relating to international environmental law aiming at sustainable development be prepared in the context of the review of Montevideo Programme II. The review of international environmental law in general and of the implementation of the Montevideo Programme II provides insight into further actions for the development of international environmental law aiming at sustainable development.

3. Part I of the Position Paper briefly reviews the current status of international environmental law, particularly as it relates to achieving sustainable development. Parts II-V address compliance and implementation, dispute avoidance and settlement, new concepts and principles, and liability and compensation, respectively. Part VI discusses the need for, and feasibility of, new international environmental instruments based on a study requested in UNEP Governing Council decision 18/9, paragraph 5. Part VII recommends specific priorities for action to ensure the further development and effective implementation of international environmental law related to achieving sustainable development.

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I. Current status of international environmental law

4. Sustainable development was the foundation underlying the 1992 United Nations Conference on Environment and Development (UNCED), which not only affirmed the goal of sustainable development, but added critical meaning and substance to the concept. As suggested by UNEP Governing Council decision 18/9, the purpose of this position paper is to review international environmental law in the light of sustainable development.

5. International environmental law has developed as a rapidly growing specific field of international law. The field is comprised of numerous international conventions, international custom, general principles of law, judicial decisions, certain acts of international organizations, teachings of certain publicists, and many non-legally binding instruments.

6. Since UNCED, the United nations Framework Convention on Climate Change, the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea have all come into force, as have a number of regional and bilateral conventions. The United nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa will also enter into force in December 1996. A number of non-legally binding instruments, including for example the declarations and programmes of actions from the Cairo International Conference on Population and Development, the Copenhagen World Summit for Social Development, the Beijing Fourth World Conference on Women, and the Istanbul Second United Nations Conference on Human Settlements have elaborated the relationship between environmental protection and other aspects of sustainable development. Certain judicial and other decisions, including the 8 July 1996 International Court of Justice Advisory Opinion addressing international environmental law in the context of the threat or use of nuclear weapons in armed conflict, have also contributed to the further development of international environmental law. The increasing number of binding treaties and other instruments that address environmental issues solely and directly or those that include or take into account environmental issues as part of their regulatory framework reflects the growing concern with the environment and the need for international cooperation. In addition to continuing to address specific resource management and health issues, international environmental law will also increasingly emphasize processes and procedures as in the UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context and a legally binding Prior Informed Consent instrument for certain hazardous chemicals currently being negotiated.

7. In keeping with events since the 1972 United nations Conference on the Human Environment (Stockholm Conference), a growing number of actors are now involved in the field of environment. International environmental agreements, for example, frequently create conferences of the parties, secretariats, implementation committees, technical bodies, and advisory groups. International financial and development institutions are involved increasingly in implementation of environmental treaties as they aim toward sustainable development. Similarly, regional institutions, particularly in the context of regional economic integration, are increasingly addressing environmental issues. The role of non-governmental actors, including, _inter alia,_ private industry, the scientific community, academic institutions, and

environment and development organizations, is increasingly recognized as critical for the development and implementation of international environmental law. The growing number of actors involved in the field of environment offers flexibility and opportunities for innovation in resolving environmental and sustainable development problems. It also raises challenges to ensure coordination, consistency and adequate funding.

8. Because of the broad range of issues related to sustainable development, international environmental law intersects with other fields of law. The interaction of international environmental law with other fields, for example international trade, intellectual property rights, humanitarian law, or human rights, has received increasing attention and remains a major challenge for achieving sustainable development.

9. International and national environmental law are interdependent. International environmental law has implications for the priorities, goals and strategies of national law, while advances in national constitutions and other laws may provide evidence of evolving international environmental norms. International law also assists in disseminating successful approaches among States, thereby facilitating the harmonization of environmental law. In some instances international environmental law also provides a framework for financial and technical assistance for strengthening national laws and building national capacity to meet international obligations. In turn, international environmental law is in most cases implemented through national law and thus depends on national law for its effectiveness.

10. The current status of international environmental law reflects progress in the implementation of the Montevideo Programme II. Many of the above-mentioned developments are closely related to, or constitute relevant subject areas of, the Montevideo Programme II.

11. As international environmental law has evolved, it has developed certain characteristics particularly important for achieving sustainable development. International environmental law increasingly reflects an integrated approach by taking into account social and economic development goals. International environmental law also recognizes the disparities in relative development levels, allowing for differentiated implementation schedules, financial resources and technology transfers as ways to assist developing countries in meeting their international obligations. International environmental law also reflects a growing role for non-State actors and recognizes the need for broad participation in environment and development decisions. More generally, in moving toward sustainable development, international environmental law is inspiring new and innovative concepts, principles and ideas, and developing facilitating and enabling mechanisms and procedures in areas such as implementation, compliance, dispute avoidance, and dispute settlement. It is thereby playing an increasingly important role in promoting the integration of environment and development and providing an effective legal and regulatory framework for implementing Agenda 21.

II. Implementation and Compliance

12. Increasing attention is focused on improving the effectiveness of existing environmental instruments, particularly through improving compliance and implementation. Compliance and implementation can be improved in part by identifying and addressing potential problems during negotiations of international instruments. Ultimately, however, compliance and implementation depend on the existence and effectiveness of corresponding national legislation, institutions, and policies, including those that ensure access to judicial and administrative fora, and national capacity and will to implement them. More research, including case studies, is necessary to understand issues that occur at the national and subnational level. Lessons learned from such research will enhance compliance and implementation and also provide useful information to future treaty negotiations and revisions.

13. Compliance with international environmental obligations frequently requires resources, including technologies or technical expertise, that are not readily available, particularly in developing countries. Often a failure to comply reflects a lack of capacity, rather than a lack of will. Accordingly, reliance on sanctions will typically not be appropriate except in response to flagrant violations of international norms caused by a lack of will and not by a lack of capacity. As reciprocity with respect to sanctions is often not feasible in international environmental law, withdrawal of membership rights may often be the only viable option.

14. Due to the global nature of some environmental issues and the potentially high cost of compliance, particularly for developing countries and countries in transition, new "enabling" measures are emerging that facilitate and promote compliance and implementation in a spirit of global partnership. These mechanisms include the provision of additional financial resources, technical assistance, transfer of technology, capacity building, and specific cooperative approaches such as joint implementation under the United Nations Framework Convention on Climate Change. One recent example that seeks to identify appropriate enabling mechanisms is the non-compliance procedure under the Montreal Protocol on Substances that Deplete the Ozone Layer, which allows countries to report difficulties with compliance to an implementation committee, thereby enlisting the help of other Parties in achieving compliance.

15. Building the capacity of developing countries to implement their international obligations remains among the most crucial challenges for enabling compliance. Some capacity building efforts, particularly financial support and technology transfer provisions of specific international environmental treaties, are unique and essential features of international environmental law. In the future, increased cooperation and new partnerships with and among different actors, including for example the financial institutions, industry, and environment and development non-governmental organizations, will be critical for improving compliance and implementation.

16. International environmental treaties rely substantially on self-reporting. Countries are obligated to report on a broad range of activities, including, for example, efforts to curb trade in endangered wildlife, reduce greenhouse gas emissions, eliminate production of ozone destroying

substances, and conserve biological diversity. National reporting is also an important element for evaluating progress in implementing Agenda 21. Compliance with reporting requirements could be enhanced by, inter alia: increasing capacity to gather information and compile the necessary reports; streamlining, harmonizing and integrating existing reporting requirements; increasing transparency and public involvement in reporting; and adopting new technologies and methodologies for reporting. International cooperation and assistance should also be targeted to assist developing countries and countries in transition to implement coherent, effective and credible reporting systems.

17. Subject to their constitutive instruments, treaty secretariats can also play an enhanced role in monitoring compliance with, and improving implementation of, the obligations of Parties. In this regard, Secretariats should cooperate with one another in areas of common expertise and responsibility. National compliance plans containing specific and measurable benchmarks should be developed and submitted to treaty secretariats at or near the time of ratification. Treaty secretariats should assist Parties to ensure that domestic legislation conforms with treaty obligations and national compliance plans. Secretariats should also cooperate with the international financial institutions to assist countries to enhance their capacity to meet their international obligations. The international financial institutions should also ensure that projects they finance or support are in conformity with the requirements of applicable international and national environmental law.

18. Enhancing available fact-finding mechanisms could improve compliance and implementation. As one example, the OECD's independent review of the environmental performance of each member country includes implementation of international treaties. Broader use of fact-finding and inspection powers should also be considered as important methods for identifying and publicizing non-compliance. New fact-finding powers like those found in the inspection mechanisms of some multilateral development banks provide important examples for future efforts. Some experiences from other fields, for example human rights, labour standards, and disarmament treaties, may also provide valuable lessons for expanding the use of fact-finding in the environmental field.

19. Regional approaches to enhancing implementation and compliance may play an important role in the future. Processes of regional economic integration to the extent they aim at sustainable development may contribute to monitoring or enhancing environmental performance.

20. The role of non-State actors in facilitating a State's compliance and implementation is increasing and should be enhanced. Many non-State actors have expertise and resources to monitor and assist implementation efforts and draw attention to incidents of non-compliance. Non-State actors working cooperatively with governments can contribute significantly to a culture of compliance by helping to build the capacity for implementation, by assisting in the transfer and dissemination of technology and knowledge, and by raising the general awareness of environmental issues. To enhance the role of non-State actors, their participation should be allowed and encouraged in the development and implementation of international environmental instruments, and more access to information about compliance and implementation should be

provided by international and national institutions. Increased education concerning environmental issues, particularly at the local level, is also important for facilitating improved compliance and implementation.

21. In addressing the issues of compliance and implementation, the Experts Group has taken into account the results of the International Experts Workshop on Compliance with International Environmental Agreements, held in Washington, D.C. on 20 and 21 May 1996, and organized by UNEP in collaboration with the Georgetown University Law Center. The report of the Workshop is attached as Annex IV to the Final Report of the Expert Group Workshop.

III. Dispute Avoidance and Settlement

22. Dispute avoidance plays a particularly important role in international environmental law. The emphasis on dispute avoidance reflects the need to anticipate and prevent environmental problems as reflected in the precautionary principle and the principle of prevention of environmental harm. Area D of the Montevideo Programme II endorsed a strategy of developing "methods, procedures and mechanisms that promote, inter alia, informed decisions, mutual understanding and confidence-building, with a view to avoiding environmental disputes and, where such avoidance is not possible, to their peaceful settlement."

23. Increasingly important dispute avoidance and confidence-building mechanisms and procedures are: exchange of available information; the use of independent scientific and technical experts and panels; national reporting; notification and consultation procedures; prior informed consent; and transboundary environmental impact assessment. Innovative and informal measures of dispute avoidance, which frequently cost less and are more flexible, should be encouraged. By improving compliance with international obligations, the compliance and implementation mechanisms addressed in Area B of the Montevideo Programme II and in Part II above also contribute to avoiding disputes.

24. As suggested by the Montevideo Programme II, where avoidance is not possible, the peaceful settlement of disputes remains critical. Under the Charter of the United Nations, the primary mechanisms for achieving the peaceful settlement of disputes, includes "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Most of the major environmental regimes now incorporate similar mechanisms from which the parties can choose that range from non-compulsory procedures (for example, negotiation, fact-finding, mediation or conciliation) to compulsory third-party procedures (arbitration or judicial settlement). These mechanisms increasingly include both dispute avoidance and dispute settlement procedures. The range of options provides important opportunities for improved management of international environmental conflicts.

25. The utilization of permanent dispute resolution mechanisms also may facilitate the settlement of international environmental disputes. In this regard, several recent developments are noteworthy, including the International Court of Justice's creation of an environmental chamber, the

establishment of the International Tribunal on the Law of the Sea, and the possible use of the Permanent Court of Arbitration. Such fora could provide new opportunities for settling environmental disputes and emphasize the necessity of ensuring the further development of a consistent body of international environmental law.

26. Intergovernmental organizations and their competent bodies, such as UNEP, may play a facilitating and assisting role in environmental dispute avoidance and settlement. Such a role can be enhanced at the request of States, through involvement of such entities in fact finding, inter alia, by providing technical expertise. United Nations organs could also consider seeking advisory opinions of the International Court of Justice on international environmental law questions of concern. Parties to environmental treaties that establish mechanisms to facilitate dispute avoidance and settlement should be encouraged to use such mechanisms. Regional organizations should particularly be encouraged to deal with issues at the regional level. Current examples of innovative approaches relating to dispute avoidance include the inquiry commissions that can be created at the request of any affected party under the UNECE Convention on Environmental Impact Assessment in a Transboundary Context and the implementation committee under the Montreal Protocol. Because prevention is to be preferred to cure, these and similar approaches should be actively promoted in the future development of international environmental law.

27. All countries concerned should have the opportunity to participate fully and effectively in dispute avoidance and settlement mechanisms. Procedures for dispute avoidance and settlement should be clear and equitable and should reflect reasonable time frames. Developing countries should be assisted in building the capacity and obtaining the resources necessary for participating fully and effectively in the preparation for, and conduct of, processes of dispute avoidance and settlement.

28. The role of non-State actors in helping to avoid and resolve disputes should also be enhanced. Non-State actors can, for example, provide technical assistance, assist in information exchange and distribution, and provide independent fact-finding. Affected persons and their representatives should also be given expanded opportunities to protect their interests in international environmental issues. In particular, in the context of regional economic integration, they should be able to access administrative and judicial proceedings in the country where the alleged harm originated without discrimination on the basis of their residence or nationality. International institutions should also ensure that affected individuals are provided objective, transparent and independent mechanisms for raising their claims. Possibilities for giving non-State actors a role in inter-State disputes before arbitration or judicial tribunals should also be considered.

IV. Concepts and Principles in International Environmental Law

29. In recent years, a variety of international environmental concepts and principles aiming at sustainable development has emerged in a number of different contexts. These concepts and principles are an important part, and product, of the development of international environmental law. They serve several functions: providing coherence and consistency to international

environmental law; guiding governments in negotiating future international instruments; providing a framework for the interpretation and application of international environmental law in specific cases; guiding the development of domestic environmental laws and policies; and assisting the integration of international environmental law with other international law fields.

30. The nature and status of specific concepts and principles in international environmental law vary. Some are just emerging and others more developed. Some may be legally binding and some may not be legally binding. Some are supported by considerable State practice, while others lack sufficient evidence of state practice. Some are clear and others require further elaboration.

31. Several widely accepted principles of international law have important relevance for the protection of the environment. Thus, for example, the duty of States to cooperate in good faith, the requirement of peaceful settlement of international disputes, the principle of sovereign equality, and the law of state responsibility are as important for international environmental law as for international law generally.

32. The following sections A-H address certain concepts and principles, be they legally binding or not, that are particularly relevant to the development of international environmental law aiming at sustainable development. In this regard, the principles in both the Stockholm and Rio Declarations and the World Charter for Nature are important. Also noteworthy are the principles identified by the 1987 World Commission on Environment and Development's legal experts group and IUCN's 1995 Draft Covenant on Environment and Development. Many of these concepts and principles have also been applied in different contexts in specific environmental treaties.

33. International consensus is emerging that the concepts and principles discussed below may be considered as core elements in the further development of international environmental law. For each principle, a starting point for elaborating the principle in the future is suggested and a description of some of its possible basic elements is presented. The following general points should be considered with respect to each of the concepts and principles:

(a) The term principle, as opposed to concept is frequently used for convenience; it is not intended to have any legal significance and is thus without prejudice to the legal status of the principle or concept.

(b) When it comes to the implementation and application of these principles to developing countries, their special needs and concerns should be taken into account.

(c) The order in which these principles is presented is not intended to have any significance as to their relative importance.

(d) These principles are interrelated and should be considered in an integrated way.

(e) Although these principles are generally addressed to subjects of international law, such as States and international organizations, actors who are not subjects of international law are increasingly important for the application and development of these principles.

A. Integration of Environmental Protection, Social Development and Economic Development

34. Sustainable development requires the integration of environment and development. Principle 4 of the Rio Declaration provides a potential starting point for the elaboration of this principle: "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." Paragraph 6 of the Copenhagen Declaration further clarified this point: "economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people."

35. Basic elements of the principle of integration might include:

(a) Requiring that decision-making take into account the environmental, social and economic dimensions of proposed actions, so that, for example, environmental concerns are integrated into policies and activities relating to economic development and social development.

(b) Seeking, in accordance with the objective of sustainable development, to ensure the conservation and sustainable use of the world's resources and the maintenance of essential ecological processes while also seeking to eradicate poverty and to achieve sustainable economic growth and development and social justice.

(c) Recognizing the importance of long-term approaches that take into account long-term strategies and that may include the use of environmental and social impact assessment, risk analysis, cost-benefit analysis, and natural resource accounting.

(d) Recognizing that the integration of environmental, social and economic policies requires transparency and broad public participation in governmental decision-making.

B. Prevention of Environmental Harm

36. A potential starting point for elaboration of the international dimension of environmental harm is customary international law as contained in Principle 2 of the Rio Declaration and Principle 21 of the Stockholm Declaration. As for the domestic dimension of environmental harm, concepts and principles are in the process of emerging.

37. Basic elements of the principle of prevention of environmental harm might include:

(a) Recognizing that environmental protection is usually best achieved by preventing environmental harm rather than by attempting to repair or compensate for environmental damage once it has occurred.

(b) Affirming a preference for pollution prevention or waste minimization policies and approaches, including inter alia periodic pollution prevention audits, environmental impact assessments, internalization of environmental costs, life-cycle analyses, extended producer responsibility, and the enactment of effective environmental legislation.

(c) Recognizing that the principle is to be read in the light of the opinion of the International Court of Justice that "[t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment."

C. Common Concern of Humankind

38. A potential starting point for the elaboration of the principle of common concern may be: Threats to the global environment, such as those to global climate and biodiversity, affect the common interest of humankind and therefore are subjects of its common concern.

39. Basic elements of the principle of common concern might include:

(a) Recognizing that the environment constitutes a unity, the conservation of which concerns all humankind and that transboundary and domestic environmental issues that are not or cannot be effectively managed by national or regional efforts can also give rise to common concern.

(b) Recognizing a common responsibility for and interest of humankind in the environment.

(c) Recognizing the need to strike a balance between common concern and national sovereignty.

D. Global Partnership and International Cooperation

40. A potential starting point for the elaboration of this principle is the Rio Declaration's Principle 7: "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem." This principle should be read in conjunction with other principles in the Rio Declaration that require international cooperation.

41. Basic elements of the principle of global partnership might to include:

(a) Recognizing the ecological interdependence of States and the need for broad cooperation to address and resolve environmental issues.

(b) Affirming the obligation of every State to cooperate in good faith also with respect to environmental and developmental issues.

(c) Recognizing the different capacities and responsibilities of different countries, thereby reflecting a close relationship to common but differentiated responsibilities.

E. Common but Differentiated Responsibilities

42. Principle 7 of the Rio Declaration provides a starting point for the elaboration of this principle: "In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."

43. Basic elements of the principle of common but differentiated responsibilities might include:

(a) Requiring that all States are individually and jointly responsible for protecting the environment and promoting sustainable development, but recognizing that, because of different levels of development, countries may have different capacities to respond to environmental problems.

(b) Recognizing that the differentiation of responsibilities should correlate to the degree of contribution to the specific environmental harm.

(c) Recognizing that differences in capabilities and in contributions to environmental harm should be reflected inter alia in: differential timetables for implementation of, and compliance with, international obligations; benefit sharing; international financial support; transfers of environmentally sound technologies; and international support for capacity-building.

(d) Recognizing that among the common responsibilities is a responsibility to provide collective and cooperative assistance to those countries lacking national capacity for implementation.

F. Equity Within and Among Generations

44. A potential starting point for the elaboration of the principle may be: States should meet the developmental and environmental needs of present and future generations in an equitable manner.

45. Basic elements of equity within and among generations might include:

(a) Requiring that present generations use their resources to meet their own environment and development needs in a way that protects the sustainable development of future generations.

(b) Committing to the long-term protection of the environment.

(c) Ensuring that the interests of future generations are adequately taken into account in policies and decisions relevant to development.

(d) Avoiding and, if need be, redressing disproportionate environmental harm from economic activities.

(e) Ensuring a non-discriminatory allocation of current environmental benefits.

G. Precaution

46. A potential starting point for elaborating the precautionary principle is: Where there are threats of serious or irreversible harm, lack of full scientific certainty about the cause and effects of environmental harm shall not be used as a reason for postponing measures to prevent environmental degradation.

47. Basic elements of the precautionary principle might include:

(a) Affirming a preference for anticipating environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity.

(b) Recognizing that scientific certainty, to the extent it is obtainable, with regard to environment and development issues may come too late to take effective responses to environmental threats.

(c) Recognizing that where there is an identifiable risk of serious or irreversible environmental harm, including for example extinction of species, widespread toxic pollution or major threats to essential ecological processes, it may be appropriate to place the burden of proof on the proposer of the activity potentially harmful to the environment.

H. Internalization of Costs

48. A potential starting point for elaboration of the principle might be: States should take, in accordance with their capabilities, the actions necessary to ensure that users of natural resources bear the full costs, including the environmental costs, of their economic activities. Internalization of costs includes what has become known as the polluter pays principle.

49. Basic elements of the internalization of costs might include:

(a) Recognizing the need to ensure that prices for goods and services reflect the full costs, including the environmental costs, of production, as a primary mechanism for integrating environmental protection and economic activities to achieve sustainable development.

(b) Recognizing that the principle may contribute to the removal of barriers to trade by eliminating hidden subsidies and facilitating the harmonization of environmental standards.

(c) Recognizing that additional capacity building and cooperation are necessary to assist developing countries in implementing the principle consistent with their own environment and development priorities and in ways that do not adversely affect traditional or indigenous uses of natural resources.

(d) Applying implementation mechanisms, including inter alia user fees, emission taxes, elimination of subsidies, pollution standards, and environment-friendly accounting systems both at the national level and within the private sector.

V. Liability and Compensation

50. In accordance with the general principles of international law, every internationally wrongful act of a State entails its international responsibility. This equally applies in the field of international environmental law. Such responsibility would include, apart from cessation of the wrongful act and other obligations, liability for damage caused including payment of appropriate compensation. Transboundary harm caused by an act or activity which is otherwise not prohibited by international law may also entail liability.

51. Both the Stockholm and Rio Declarations have called for the further development of international law regarding liability and compensation for environmental damage. This remains a major challenge for the development of international environmental law. The draft articles developed by the International Law Commission (ILC) so far: deal with prevention; concern themselves primarily with activities bearing inherent risk of transboundary harm; place obligation of due diligence and not obligation of result upon the State; leave open the need to define operator, as opposed to State, liability for significant harm; and emphasize the need to provide fora for expeditious settlement of claims to ensure innocent victims are not left to bear the loss. In addition to already established regimes, questions concerning liability are under negotiation in various other international fora.

52. International instruments that establish procedures or otherwise facilitate the settlement of international environmental damage claims through the use of private international law or national law are increasingly important. In this regard, States should develop national law regarding liability and compensation and ensure equal rights and remedies to victims of environmental harm, including transboundary harm.

53. In addressing issues relating to liability and compensation, the outcome of the Expert Group Meeting on Liability and Compensation for Environmental Damage Arising from Military Activities, organized by UNEP in collaboration with the Foundation for International Environmental Law and Development (FIELD) during 1995-1996 has been taken into account.

VI. Priorities for Action

54. In light of the above considerations and the review of the Montevideo Programme II the following may be considered as priority areas of action in the further development of international environmental law aiming at sustainable development.

55. **Implementation of and Compliance with International Environmental Agreements**:

(a) Strengthening international institutional capacity to monitor compliance through, in particular, increasing the capacity to collect and verify data, evaluate scientific and technical information, and, in light of such data and information, make appropriate decisions.

(b) Identifying and applying new and innovative concepts, mechanisms and procedures that could enhance implementation and compliance, including, inter alia, financial mechanisms, technology transfer, economic incentives, and the role of the private sector.

(c) Enhancing technical assistance programmes for countries in need of assistance, upon their request, to strengthen their national capacity to implement and comply with international environmental obligations.

(d) Exploring regional approaches that could enhance implementation and compliance.

(e) Developing measures and procedures, such as the submission of compliance plans by a State when expressing its consent to be bound by a convention.

(f) Streamlining and consolidating reporting and monitoring requirements, taking into account considerations of financial and technical capacity.

(g) Promoting dialogues that involve local communities in improving implementation and monitoring compliance.

(h) Increasing the coordination and cooperation of convention secretariats among themselves and with other international entities, including the international financial institutions.

(i) Encouraging participation of non-State actors in implementation and compliance; promoting transparency regarding compliance; and enlisting the media in promoting public awareness about compliance.

(j) Analysing and further elaborating compliance mechanisms in the light of their successes and failures.

(k) Identifying ways in which new information technologies could potentially improve the implementation of and compliance with international environmental law.

56. **Dispute Avoidance and Settlement:**

(a) Emphasizing that implementation of and compliance with international environmental law are important for avoiding disputes.

(b) Continuing to develop and use non-adversarial, flexible and transparent dispute avoidance procedures as the preferred method of addressing international environmental problems.

(c) Achieving, when disputes can not be avoided, the peaceful settlement of disputes as required under Article 33 of the Charter of the United Nations, including through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement in fora such as the International Court of Justice and the International Tribunal on the Law of the Sea, resort to regional agencies or arrangements, or other peaceful means of their own choice such as arbitration.

(d) Considering the application of new concepts such as global partnership and common but differentiated responsibilities to dispute avoidance and settlement systems.

(e) Taking steps to ensure that States, in particular developing countries, have the capacity to participate fully and effectively in all dispute avoidance and settlement procedures.

(f) Increasing access of affected persons, regardless of the State in which they reside, to judicial and administrative procedures involving transboundary environmental disputes.

57. **Liability and Compensation:**

(a) Developing further international law regarding responsibility, liability and compensation for significant environmental harm caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

(b) Developing national law regarding liability and compensation and providing equal rights and remedies to victims of environmental harm, including transboundary harm.

58. **Concepts and Principles:**

(a) Clarifying and further refining concepts and principles of international environmental law (see in particular Section IV above) which could be useful for the further development and implementation of international environmental law.

(b) Considering, in light of the above, the importance of concepts and principles for the development of global and regional instruments in the field of the environment and sustainable development.

59. **Other Priorities for Action:**

(a) Analysing the interrelationship of international environmental law and other fields of law.

(b) Increasing UNEP's cooperation with the World Trade Organization so as to ensure that environmental concerns are fully and properly addressed and taken into account in the development of law and practice concerning trade, investment and intellectual property.

(c) Creating and strengthening mechanisms for making information relating to international environmental obligations available to non-State actors so as to make their participation in processes relating to the protection of the environment more effective.

(d) Analysing the legal requirements and consequences of the ever-growing integration of the Secretariats of different environmental conventions resulting eventually in their amalgamation.

(e) Exploring the means to enhance cooperation at the local level on transboundary environmental matters.

60. **New International Environmental Instruments:**

UNEP Governing Council decision 18/9, paragraph 5, called for a study of the need for and feasibility of new international environmental instruments. That study is attached to the Final Report of the Expert Group Workshop on International Environmental Law Aiming At Sustainable Development (UNEP/IEL/WS/3/2) as Annex II.